

APPEAL NO. 031781
FILED AUGUST 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 10, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury on _____; that the claimant had disability from June 10, 2002, through the date of the hearing; and that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022. The carrier appealed, asserting that it did not waive the right to contest compensability; that the claimant failed to establish that he sustained a compensable injury and had disability; and that the hearing officer erred in failing to add an issue regarding the carrier's right to repayment of benefits pursuant to Section 415.008(c). The file does not contain a response from the claimant.

DECISION

Affirmed.

The Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) indicates that the carrier first received written notice of the claimant's claimed injury on May 8, 2002. The TWCC-21 reflects that the carrier disputed the injury on the grounds that it did not arise out of or in the course and scope of employment. The TWCC-21 is dated June 11, 2002, and was received by the Texas Workers' Compensation Commission (Commission) on June 11, 2002. The hearing officer concluded that the carrier waived its right to contest the compensability of the claimed injury by not timely contesting an injury in accordance with Section 409.021. The carrier contends that the seven-day "pay or dispute" provision contained in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), does not apply to the facts of this case and cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.) in support of its position that the hearing officer erred in determining that the claimant has a compensable injury. In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury, that is, no damage or harm to the physical structure of the body, as opposed to cases where there is an injury that was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. However, in the present case, there is medical evidence to substantiate that the claimant has physical damage to the structure of his body. Accordingly, we cannot agree that Williamson precluded the hearing officer from finding that the claimant sustained a compensable injury.

The carrier next asserts that the hearing officer misinterpreted the mandates of Sections 409.021 and 409.022, in light of Texas House Bill 2199 (HB 2199), which amends Section 409.021, effective September 1, 2003. Pursuant to amended Section 409.021(1)(a-1), an insurance carrier that fails to begin the payment of benefits or notify the Commission and the employee in writing of its refusal to do so within 15 days after the date it receives its first written notice of the injury does not waive the right to contest the compensability of the claim but commits an administrative violation. The carrier argues that the Legislature has clearly expressed their intent to overrule the Downs Court's pay or dispute within seven days holding, and that HB 2199 should be given immediate effect. We do not agree. HB2199(2) states:

This Act takes effect September 1, 2003, and applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after that date. A claim based upon a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

Since the carrier did not agree to initiate benefits or dispute compensability within seven days after it received written notice of injury, the hearing officer did not err in determining that the carrier waived the right to contest compensability and that the claimant's injury is compensable. See Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 4, 2003.

Whether the claimant had disability resulting from the compensable injury was a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finally, the carrier contends that the hearing officer erred in refusing to add the issue of whether the carrier is entitled to repayment of benefits pursuant to Section 415.008(c) on the basis that he did not have jurisdiction to do so. Section 415.008 pertains to fraudulently obtaining or denying benefits and administrative violations. The Appeals Panel has held that "fraudulently obtaining workers' compensation benefits is an administrative violation requiring notice of the violation charged and notice of the right to request a hearing conducted under the [Administrative Procedure Act]" and that a "hearing is not the proper forum to determine an administrative violation." See Texas Workers' Compensation Commission Appeal No. 93610, decided September 7, 1993. The Appeals Panel has no authority to order administrative penalties and repayment of fraudulently obtained income benefits. See Texas Workers' Compensation Commission Appeal No. 992523, decided December 29, 1999. Section 415.031 provides for the initiation of administrative violation proceedings; Section 415.032 provides for the investigation of the violation and notice of the charge and right to request a hearing; and Section 415.034(a) (effective for a hearing beginning on or after January 1, 1996)

provides that the State Office of Administrative Hearings shall set a hearing. Accordingly, the hearing officer did not err in refusing to add the requested issue.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge